

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

GARY ALLEN PORTER
3160 Telegraph Road, Suite 203
Ventura, CA 93003

Certified Public Accountant Certificate
No. 19350

and

PORTER & COMPANY; GARY ALLEN
PORTER
3160 Telegraph Road, Suite 203
Ventura, CA 93003

Fictitious Name Permit No. 670,

Respondent.

Case No. AC-2008-11

OAH No. 2008080036

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 23, 2009.

It is so ORDERED January 23, 2009.


FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2554
Facsimile: (213) 897-2804
6

7 Attorneys for Complainant

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2008-11

11
12 GARY ALLEN PORTER
3160 Telegraph Road, Suite 203
13 Ventura, CA 93003

OAH No. 2008080036

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Certified Public Accountant Certificate
No. 19350

15 and

16 PORTER & COMPANY; GARY ALLEN
17 PORTER
3160 Telegraph Road, Suite 203
18 Ventura, CA 93003

19 Fictitious Name Permit No. 670,

20 Respondent.
21

22
23 In the interest of a prompt and speedy settlement of this matter, consistent with
24 the public interest and the responsibility of the California Board of Accountancy of the
25 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement
26 and Disciplinary Order which will be submitted to the Board for approval and adoption as the
27 final disposition of Accusation No. AC-2008-11.

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1 PARTIES

2 1. Carol Sigmann ("Complainant") was the Executive Officer of the
3 California Board of Accountancy ("Board"). Patti Bowers is now the Executive Office of the
4 Board, and succeeds Ms. Sigmann as the Complainant for purposes of settlement of this matter.
5 This action was brought solely in Ms. Sigmann's and Ms. Bowers' official capacities.
6 Complainant is represented in this matter by Edmund G. Brown Jr., Attorney General of the
7 State of California, by Scott J. Harris, Deputy Attorney General.

8 2. Gary Allen Porter and Porter & Company; Gary Allen Porter are
9 represented in this proceeding by attorney Mary Work, Esq., whose address is 1334 Park View
10 Avenue, Suite 100, Manhattan Beach, California, 90266.

11 3. On or about September 28, 1973, the Board issued Certified Public
12 Accountant Certificate Number 19350 to Gary Allen Porter ("Respondent"). The Certified
13 Public Accountant Certificate was in full force and effect at all times relevant to the charges
14 brought herein and will expire on February 28, 2009, unless renewed.

15 4. On or about February 14, 1995, the Board issued Fictitious Name Permit
16 Number 670 to Respondent to do business as Porter & Company. The Fictitious Name Permit
17 was in full force and effect at all times relevant to the charges brought herein and will expire on
18 February 28, 2010, unless renewed.

19 JURISDICTION

20 5. Accusation No. AC-2008-11 was filed before the Board and is currently
21 pending against Respondent. The Accusation and all other statutorily required documents were
22 properly served on Respondent on June 12, 2008. Respondent timely filed his Notice of Defense
23 contesting the Accusation. A copy of Accusation No. AC-2008-11 is attached as Exhibit A and
24 incorporated herein by reference.

25 ADVISEMENT AND WAIVERS

26 6. Respondent has carefully read, fully discussed with counsel, and
27 understands the charges and allegations in Accusation No. AC-2008-11. Respondent has also

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1 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
2 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
3 and Disciplinary Order shall be of no force or effect, and, except for this paragraph, it shall be
4 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
5 further action by having considered this matter.

6 13. The parties understand and agree that facsimile copies of this Stipulated
7 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
8 force and effect as the originals.

9 14. In consideration of the foregoing admissions and stipulations, the parties
10 agree that the Board may, without further notice or formal proceeding, issue and enter the
11 following Disciplinary Order:

12 **DISCIPLINARY ORDER**

13 IT IS HEREBY ORDERED that Certified Public Accountant Certificate
14 Number 19350 and Fictitious Name Permit No. 670, issued to Respondent Gary Allen Porter,
15 and Porter & Company; Gary Allen Porter, are revoked. However, the revocations are stayed,
16 and Respondent is placed on probation for three (3) years on the following terms and conditions.

17 1. **Obey All Laws.** Respondent shall obey all federal, California, other
18 states' and local laws, including those rules relating to the practice of public accountancy in
19 California.

20 2. **Submit Written Reports.** Respondent shall submit, within ten (10) days
21 of completion of the quarter, written reports to the Board on a form obtained from the Board.
22 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,
23 and verification of actions as are required. These declarations shall contain statements relative to
24 Respondent's compliance with all the terms and conditions of probation. Respondent shall
25 immediately execute all release of information forms as may be required by the Board or its
26 representatives.

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1 3. **Personal Appearances.** Respondent shall, during the period of probation,
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives, provided such notification is accomplished in a timely manner.

4 4. **Comply With Probation.** Respondent shall fully comply with the terms
5 and conditions of the probation imposed by the Board and shall cooperate fully with
6 representatives of the Board of Accountancy in its monitoring and investigation of the
7 Respondent's compliance with probation terms and conditions.

8 5. **Practice Investigation.** Respondent shall be subject to, and shall permit,
9 practice investigation of the Respondent's professional practice. Such a practice investigation
10 shall be conducted by representatives of the Board, provided notification of such review is
11 accomplished in a timely manner.

12 6. **Comply With Citations.** Respondent shall comply with all final orders
13 resulting from citations issued by the Board of Accountancy.

14 7. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
15 Respondent should leave California to reside or practice outside this state, Respondent must
16 notify the Board in writing of the dates of departure and return. Periods of non-California
17 residency or practice outside the state shall not apply to reduction of the probationary period, or
18 of any suspension. No obligation imposed herein, including requirements to file written reports,
19 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
20 affected by such periods of out-of-state residency or practice except at the written direction of
21 the Board.

22 8. **Violation of Probation.** If Respondent violates probation in any respect,
23 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation
24 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke
25 probation is filed against Respondent during probation, the Board shall have continuing
26 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
27 is final.

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- 1 9. **Completion of Probation.** Upon successful completion of probation,
2 Respondent's license will be fully restored.
- 3 10. **Waiver of Fee.** Respondent shall waive all fees related to the June 30,
4 2005 audit of Inverness Public Utility District.
- 5 11. **Continuing Education Courses.** During the course of probation,
6 Respondent shall complete 40 hours of professional education courses in accounting and
7 auditing as specified by the Board or its designee. This requirement shall be in addition to the
8 continuing education requirements for licensing and license renewal.
- 9 12. **Active License Status.** Respondent shall at all times maintain an active
10 license status with the Board, including during any period of suspension. If the license is expired
11 at the time the Board's decision becomes effective, the license must be renewed within 30 days
12 of the effective date of the decision.
- 13 13. **Review of Audit and Review Engagements.** During the course of
14 probation, Respondent shall annually provide the Board with a listing of all audit and review
15 engagements Respondent knows he will undertake in the subsequent twelve month period.
16 Along with the list of audit and review engagements, Respondent shall provide the Board with
17 the date on which the final audit or review report for each audit or review engagement is due.
18 During each year of probation, the Board will specify the date on which the list of audit and
19 review engagements is due, allowing at least fifteen (15) days for Respondent to provide the list
20 of engagements and their due dates to the Board.
- 21 From the list of audit and review engagements and their due dates specified each
22 year by the Respondent, the Board will select five (5) audit or review engagements whose work
23 papers and final reports shall be reviewed by a qualified outside CPA approved by the Board.
24 The Board may select all five audit or review engagements to be reviewed at one time, or may
25 select five audit or review engagements to be reviewed throughout the course of each year of
26 probation. Respondent shall maintain all work papers and final reports for all audit and review
27 engagements undertaken by Respondent during the course of probation, enabling inspection by
28 the Board or qualified outside CPA.

Upon completion of the review of the work papers and final reports for each selected audit or review engagement, Respondent shall submit a copy of the report with the reviewer's conclusions and findings to the Board. Review by the qualified outside CPA shall be at Respondent's expense.

14. **Peer Review.** During the period of probation, all audit, review, and compilation reports and work papers, shall be subject to peer review by a certified peer reviewer approved as such by the California Society of CPA's, at Respondent's expense. The review shall be conducted in accordance with the standards established by the Peer Review Board of the American Institute of Certified Public Accountants, and shall evaluate the Respondent's and his firm's system of quality control, including its organizational structure, the policies and procedures established by the firm, and the firm's compliance with its quality control system as determined on the basis of a review of selected engagements. The specific engagements to be reviewed shall be at the discretion of the peer reviewer.

Upon completion of the peer review, Respondent shall submit a copy of the report with the reviewer's conclusions and findings to the Board.

15. **Governmental and Non-Profit Audits.** During the course of probation, Respondent shall be prohibited from conducting audit engagements for governmental and non-profit entities, with the exception of not-for-profit home owners' associations.

16. **Cost Reimbursement.** Respondent shall reimburse the Board \$12,163.75 for its investigation and prosecution costs. The payment shall be made within thirty (30) days of the date the Board's decision is final.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mary Work, Esq. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate and Fictitious Name Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and

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1 intelligently, and agree to be bound by the Decision and Order of the California Board of
2 Accountancy.

3 DATED: 11/14/08.

4 GARY A. PORTER
5 GARY ALLEN PORTER
6 PORTER & COMPANY;
7 GARY ALLEN PORTER
8 Respondent

9 I have read and fully discussed with Respondent Gary Allen Porter, Porter &
10 Company; Gary Allen Porter, the terms and conditions and other matters contained in the above
11 Stipulated Settlement and Disciplinary Order. I approve its form and content.

12 DATED: 11/14/08.

13 MARY WORK, ESQ.
14 Attorney for Respondent

15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the California Board of Accountancy of the Department of
18 Consumer Affairs.

19
20 DATED: 11/14/08

21 EDMUND G. BROWN JR., Attorney General
22 of the State of California

23 GLORIA A. BARRIOS
24 Supervising Deputy Attorney General

25 SCOTT J. HARRIS
26 Deputy Attorney General

27 Attorneys for Complainant
28

DOJ Matter ID: LA2008600056
60364497.wpd

Exhibit A
Accusation No. AC-2008-11

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
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5 Telephone: (213) 897-2554
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Attorneys for Complainant

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8 **BEFORE THE**
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DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2008-11

11 GARY ALLEN PORTER
12 3160 Telegraph Road, Suite 203
Ventura, CA 93003

A C C U S A T I O N

13 Certified Public Accountant Certificate
14 No. 19350

15 and

16 PORTER & COMPANY; GARY ALLEN
PORTER
17 3160 Telegraph Road, Suite 203
Ventura, CA 93003

18 Fictitious Name Permit No. 670,
19

20 Respondent.

21
22 Complainant alleges:

23 **PARTIES**

24 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
25 capacity as the Executive Officer of the California Board of Accountancy (Board), Department
26 of Consumer Affairs.

27 2. On or about September 28, 1973, the Board issued Certified Public
28 Accountant Certificate Number 19350 to Gary Allen Porter (Respondent). The Certified Public

1 Accountant Certificate was in full force and effect at all times relevant to the charges brought
2 herein and will expire on February 28, 2009, unless renewed.

3 3. On or about February 14, 1995, the Board issued Fictitious Name Permit
4 Number 670 to Respondent to do business as Porter & Company. The Fictitious Name Permit
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 February 28, 2010, unless renewed.

JURISDICTION

8 4. This Accusation is brought before the Board under the authority of the
9 following laws. All section references are to the Business and Professions Code (Code) unless
10 otherwise indicated.

11 5. Section 5100 of the Code states:

12 "After notice and hearing the board may revoke, suspend, or refuse to renew any
13 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
14 (commencing with Section 5080), or may censure the holder of that permit or certificate for
15 unprofessional conduct that includes, but is not limited to, one or any combination of the
16 following causes:

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.....

18 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
19 the same or different engagements, for the same or different clients, or any combination of
20 engagements or clients, each resulting in a violation of applicable professional standards that
21 indicate a lack of competency in the practice of public accountancy or in the performance of the
22 bookkeeping operations described in Section 5052.

23 ||

24 " (g) Willful violation of this chapter or any rule or regulation promulgated by the
25 board under the authority granted under this chapter."

26 6. Section 5062 of the Code provides that a licensee shall issue a report
27 which conforms to professional standards upon completion of a compilation, review or audit of
28 financial statements.

1 7. California Code of Regulations, title 16, section 58, provides that
2 licensees engaged in the practice of public accountancy shall comply with all applicable
3 professional standards, including but not limited to generally accepted accounting principles and
4 generally accepted auditing standards.

5 8. California Code of Regulations, title 16, section 87, subdivision (b) states:

6 “(b) Government Auditing Continuing Education Requirement.

7 A licensee who engages in planning, directing, conducting substantial portions of field work, or
8 reporting on financial or compliance audits of a governmental agency shall complete 24 of the 80
9 hours required pursuant to subsection (a) in the areas of governmental accounting, auditing or
10 related subjects. This continuing education shall be completed in the same two-year license
11 renewal period as the report is issued. A governmental agency is defined as any department,
12 office, commission, authority, board, government-owned corporation, or other independent
13 establishment of any branch of federal, state or local government. Related subjects are those
14 which maintain or enhance the licensee's knowledge of governmental operations, laws,
15 regulations or reports; any special requirements of governmental agencies; subjects related to the
16 specific or unique environment in which the audited entity operates; and other auditing subjects
17 which may be appropriate to government auditing engagements. A licensee who meets the
18 requirements of this subsection shall be deemed to have met the requirements of subsection (c).”

19 9. Section 5107, subdivision (a), of the Code states:

20 “The executive officer of the board may request the administrative law judge, as
21 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
22 certificate found to have committed a violation or violations of this chapter to pay to the board
23 all reasonable costs of investigation and prosecution of the case, including, but not limited to,
24 attorneys' fees. The board shall not recover costs incurred at the administrative hearing.”

25 **PROFESSIONAL STANDARDS**

26 10. The standards of practice pertinent to this Accusation and the
27 engagements at issue include, without limitation:

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1 A. Generally Accepted Auditing Standards ("GAAS") issued by the
2 American Institute of Certified Public Accountants (AICPA). The ten general, field work, and
3 reporting standards outlined by GAAS (AU §150), which are interrelated, are discussed in the
4 Statements on Auditing Standards ("SAS"). The SAS are codified, by "AU" number, in the
5 AICPA's *Codification of Statements on Auditing Standards*. Among the SAS relevant herein, in
6 addition to AU §150 which sets forth the Generally Accepted Auditing Standards are: AU §530
7 (Dating of Independent Auditor's Report), AU §339 (Audit Documentation), AU §333
8 (Management Representations), AU §337 (Lawyers' Response to Auditor's Request for
9 Information), AU §508 (Reporting - Departures From Unqualified Opinions), AU §230
10 (Professional Care in Performance of Work), AU §431 (Adequacy of Disclosure in Financial
11 Statements), AU §316 (Fraud in Financial Statement Audit - Exercise of Skepticism), and AU
12 §561 (Subsequent Discovery of Facts Existing at the Date of Auditor's Report).

13 B. Generally Accepted Governmental Auditing Standards ("GAGAS" or
14 "GAS"), set forth in *Government Auditing Standards - Standards for Audit of Governmental*
15 *Organizations, Programs, Activities and Functions*, are issued by the Comptroller General of the
16 United States, United States General Accounting Office, 2003 rev. as amended (the "Yellow
17 Book"). For a "Yellow Book" audit, these standards, **in addition** to requiring observance of the
18 GAAS requirements set forth above, provide additional requirements, e.g., supplemental
19 working paper documentation requirements, additional reporting requirements (reports on
20 internal control and compliance with laws and regulations), and quality reviews, as set forth
21 hereinafter. Among specific GAS pertinent herein are, without limitation:

22 (1) GAGAS Sections 5.05 and 5.06 requires that audit reports state that the
23 audit was performed in accordance with GAGAS.

24 (2) GAGAS Section 3.45 requires auditors performing work under GAGAS to
25 maintain their professional competence through continuing professional education. Every two
26 years, the auditor at a minimum take courses that enhance the auditor's proficiency to perform
27 audits or attestation engagements. Of the eighty hours, at least twenty-four hours should be in
28 subjects directly related to governmental auditing or the government environment.

1 (3) GAGAS Section 3.34 requires auditors to exercise reasonable care and
2 diligence and to observe the principles of serving the public interest and maintaining the highest
3 degree of integrity, objectivity, and independence in applying professional judgment to all
4 aspects of their work. If an auditor states they are performing work under GAGAS, then they
5 should justify any departure from GAGAS.

6 (4) GAGAS Section 3.36 states that professional judgment requires auditors
7 to exercise professional skepticism throughout an assignment.

8 C. Government Accounting Standards Board ("GASB")¹ Statement No. 34,
9 *Basic Financial Statements - and Management's Discussion and Analysis - for State and Local*
10 *Governments* ("GASB 34"). Financial reporting of governmental entities must be in compliance
11 with GASB 34.

12 D. GASB Statement No. 40 ("GASB 40") addresses Deposit and Investment
13 Risk Disclosures, and is an amendment to GASB Statement No. 3. GASB 40 limits required
14 disclosures and eliminates category 1 and 2 deposits and investments formerly required under
15 GASB 3.

16 **FIRST CAUSE FOR DISCIPLINE**

17 (Gross Negligence/Repeated Negligent Acts)

18 11. Respondent is subject to discipline pursuant to Code section 5100,
19 subdivision (c), in that Respondent performed audits of governmental entities that contained
20 departures from Generally Accepted Auditing Standards ("GAAS") and Generally Accepted
21 Government Auditing Standards ("GAGAS" or "GAS"). The specific acts and standards of
22 practice that were departed from, and/or, violated, which collectively constitute gross negligence
23 and repeated negligent acts are as follows:

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25 _____
26 1. GASB is a nonprofit entity responsible for establishing accounting standards, or the
27 Generally Accepted Accounting Principles (GAAP) for state and local governments. The
28 Financial Accounting Standards Board ("FASB") is responsible for setting accounting
standards for the private sector. GAAP is derived from various authoritative sources.

1 **Inverness Public Utility District**

2 A. Respondent performed audits of Inverness Public Utility District
3 (Inverness) for fiscal years ended June 30, 2005 and June 30, 2004. Inverness is a special district
4 consisting of governmental and business activity from a community water system and a
5 volunteer fire department. The audits of Inverness contained the following departures:

6 **Inverness - Auditor's Report**

7 (1) The independent auditor's report for fiscal years ended June 2005 and
8 June 2004 failed to state that the audits were conducted in accordance with standards applicable
9 to financial audits contained in GAS (GAGAS Section 5.05 and Section 5.06).

10 (2) Respondent dated the independent auditor's report for the fiscal year
11 ended June 2005 on August 22, 2005, prior to obtaining sufficient appropriate evidence to
12 support the auditor's opinion. In addition, all audit work paper programs were also dated August
13 22, 2005, including, but not limited to, information related to the P.E.R.S. defined contribution
14 plan. On November 1, 2005, Respondent initiated an electronic mail communication to
15 Inverness requesting information related to the P.E.R.S. Actuarial Evaluation, which was in
16 conjunction with Note 6 to the audited financial statements. The electronic mail communication
17 occurred after Respondent signed and dated the independent auditor's audit report (AU Section
18 530.01, AU 339.23).

19 (3) Respondent issued a final report on May 4, 2006 with an unqualified
20 independent auditor's opinion dated August 22, 2005 for the Inverness audit for the fiscal year
21 ended June 2005 without having received a required representation letter from Inverness'
22 management. In addition, Respondent indicated in the audit work papers that he had reviewed
23 all audit letters received from attorneys, and summarized necessary items for footnote disclosure
24 on August 22, 2005, when in fact, the legal representation letter received from Inverness' legal
25 representatives was dated August 24, 2005, two days after Respondent signed the independent
26 auditor's report (AU Section 333.01, AU Section 333.13, AU Section 337C, AU Section
27 508.22).

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1 (4) Respondent issued unqualified independent auditor's opinions for the
2 Inverness audits for fiscal years ended June 2005 and June 2004, when, in fact, the financial
3 statements and note disclosures failed to comply with GASB 34 (in conjunction with AU Section
4 431.03) as follows:

5 a. For both the 2005 and 2004 audits, a Government-wide Financial
6 Statement - Statement of Net Assets was required, but not presented. Instead, the audit reports
7 contained a Combined Balance Sheet (GASB 34, paragraph 12);

8 b. For the 2005 audit, a Statement of Cash Flow was not required, but
9 was presented for the General Fund (GASB 34, paragraph 78);

10 c. For the 2005 audit, a Statement of Cash Flow was required, but not
11 separately presented for the Water Enterprise Fund (GASB, paragraph 91);

12 d. The following financial statement information was omitted from
13 both the 2005 and 2004 Inverness audit reports: Governmental Fund Balance Sheet (GASB 34,
14 paragraph 78); Reconciliation of the Balance Sheet of the Governmental Funds to the Statement
15 of Net Assets (GASB 34, paragraph 77); Statement of Revenues, Expenditures and Changes in
16 Fund Balance for the Governmental Funds (GASB 34, paragraph 78); Reconciliation of the
17 Statement of Revenues, Expenditures and Changes in the Fund Balance of the Governmental
18 Funds to the Statement of Activities (GASB 34, paragraph 77); Statement of Net Assets or
19 Balance Sheet of the Water Enterprise Funds was not separately presented (GASB 34, paragraph
20 91); Statement of Revenues, Expenses and Changes in Fund Net Assets for the Water Enterprise
21 Fund was not presented in standard format (GASB 34, paragraph 91);

22 e. The notes to the financial statements failed to meet professional
23 standards as follows:

24 i. Note 2. For the 2005 audit report, Cash, Cash Equivalents
25 and Investments should have been presented in accordance with GASB 40, and not in
26 accordance with GASB Statement No. 3, which was amended by GASB 40;

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1 ii. Note 5. For both the 2005 and 2004 audits, Fixed Assets
2 should have included the details of additions, deletions and transfers during the year,
3 representing the changes between years for the balance of each fixed asset class (GASB 34,
4 paragraph 117);

5 iii. Note 7. For both the 2005 and 2004 audits, Bonds Payable
6 failed to include details of the annual principal and interest payments per year (GASB 34
7 paragraph 119).

8 Inverness Audit Work Papers

9 (5) Respondent failed to apply professional skepticism in assessing
10 information obtained during the course of the audit for fiscal year ended June 2005. Respondent
11 stated on the draft and final versions of the Inverness Management Letter for June 30, 2005 that
12 there was no material deficiency in the design or operation of any accounting control noted in the
13 audit. However, on audit work papers entitled "SAS 99 Fraud Risk Analysis," "Internal Control
14 Questionnaire - D-2," "Internal Control Matrix," and "A-2-2 Management Letter Points Sheet,"
15 Respondent documented "lack of segregation of accounting duties." Work papers indicated that
16 potential fraud risk factors were identified related to Inverness' General Manager, as well as
17 deficiencies in the segregation of accounting duties. Respondent admitted that he failed to note
18 the deficiencies in the audit report because Inverness' General Manager demanded that they be
19 removed (AU Sections 316.13, GAGAS 3.33, 3.34, and 3.36).

20 Inverness - Other Audit Issues

21 (6) Respondent failed to exercise due professional care in the fiscal year
22 ended 2005 Inverness audit, in that the net assets of June 30, 2005 on the Statement of Activities
23 did not equal the total net assets on the Combined Balance Sheet. Additionally, Respondent
24 omitted a Statement of Net Assets from the audited financial statements, when in fact, the
25 Respondent's audit work papers contained references pertaining to a statement of net assets and
26 government-wide financial statements (AU Sections 230.01 and 230.02).

27 (7) Respondent and his staff conducted governmental audits of Inverness
28 during Respondent's two year license renewal period ended February 28, 2005. During this

1 period, Respondent, as well as an auditor working for Respondent, were not qualified to perform
2 governmental audits, in that Respondent and the firm auditor failed to complete the requisite
3 continuing professional education specified by GAGAS related to governmental audits, as more
4 fully discussed in paragraph 14, below (GAGAS Section 3.45, California Code of Regulations,
5 title 16, section 87, subdivision (b)).

6 **Bell Canyon Community Services District**

7 B. Respondent performed audits of Bell Canyon Community Services
8 District (Bell Canyon) for fiscal years ended June 30, 2006 and June 30, 2005. The audits of
9 Bell Canyon contained the following departures:

10 **Bell Canyon Auditor's Report**

11 (1) The independent auditor's report on the financial statements failed to state
12 that the audits were conducted under GAS (GAGAS Sections 5.05 and 5.06).

13 (2) The independent auditor's report on the financial statements made
14 references to general purpose financial statements, which became obsolete with the
15 implementation of GASB 34.

16 (3) The independent auditor's report on the financial statements failed to
17 include a paragraph referencing the report on internal control over financial reporting and
18 compliance (GAS/A-133 AICPA Audit Guide).

19 (4) The independent auditor's report on the financial statements failed to state
20 that Management Discussion and Analysis (MD&A) was supplementary information required by
21 GASB, or the auditor's responsibility with respect to the MD&A (GAS/A-133 AICPA Audit
22 Guide).

23 (5) Language used in the "Independent Auditor's Report on the Internal
24 Control Structure Based on an Audit of General Purpose Financial Statements Performed in
25 Accordance with Government Auditing Standards" and "Independent Auditor's Report on
26 Compliance Based on an Audit of General Purpose Financial Statements performed in
27 Accordance with Government Auditing Standards" was obsolete with respect to basic financial

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1 statements and OMB Circular A-128 . Further, references to the Single Audit Act were
2 inappropriate, as Bell Canyon did not appear to receive federal revenue.

3 (6) Respondent issued an unqualified auditor's opinion for Bell Canyon for
4 fiscal years ended June 2006 and June 2005, when the financial statements and note disclosures
5 failed to comply with standards (in conjunction with AU Section 431.03) as follows:

6 a. For both the 2006 and 2005 Bell Canyon audits, government-wide
7 financial statements, including a Statement of Net Assets and a Statement of Activities were
8 required, but were not included (GASB 34, paragraph 12).

9 b. The notes on the Financial Statements failed to meet professional
10 standards. Specifically, Note 1 - Investments - stated "this cash and investment would be
11 included in Category 1 as defined in GASB 3," when in fact, Category 1 was not applicable
12 under the standards of GASB 40.

13 Bell Canyon - Other Audit Issues

14 (7) Respondent failed to exercise due professional care upon discovery of
15 GASB 34 financial statement, disclosure, and reporting deficiencies in the fiscal years ended
16 2006 and 2005 audits of Bell Canyon, in that Respondent learned of the deficiencies and failed
17 to reissue the audit reports. Additionally, Respondent failed to notify Bell Canyon that the initial
18 audit report was not in compliance with GASB 34.

19 Castroville Water District

20 C. Respondent performed audits of Castroville Water District (Castroville)
21 for fiscal years ended June 30, 2006 and June 30, 2005. The audits of Castroville contained the
22 following departures:

23 (1) The independent auditor's report on the financial statements made
24 references to general purpose financial statements, which became obsolete with the
25 implementation of GASB 34.

26 (2) The independent auditor's report on the financial statements failed to
27 include a paragraph referencing the report on internal control over financial reporting and
28 compliance (GAS/A-133 AICPA Audit Guide).

(3) Failed to include a statement of revenues, expenses and changes in fund net assets or fund equity. While a schedule titled "Revenue and Expenses" was presented, it lacked required elements regarding beginning and ending net assets, and was improperly titled (GASB 34, paragraph 91).

(4) Respondent issued an unqualified auditor's opinion for Castroville for fiscal years ended June 2006 and June 2005, when, the notes to the financial statements failed to meet professional standards (in conjunction with AU Section 431.03) as follows:

a. Note 1. Cash, Cash Equivalents and Investments should have been presented in accordance with GASB 40, and not in accordance with GASB Statement No. 3, which was amended by GASB 40;

b. Note 1. Property, Plant and Equipment should have included the details of additions, deletions and transfers that represent the change in the balance (GASB 34, paragraph 117);

c. Note 2. Long-Term Debt should have included beginning and end-of-year balances and increases and decreases (separately presented) (GASB 34, paragraph 119).

North Marin Water District

D. Respondent issued an unqualified independent auditor's opinion for the North Marin Water District (North Marin) for fiscal year ended June 30, 2006, when, in fact, the note disclosures failed to comply with standards (in conjunction with AU Section 431.03) as follows:

(1) The notes to the financial statements failed to meet professional standards as follows:

a. Note 2. Cash, Cash Equivalents and Investments should have been presented in accordance with GASB 40, and not in accordance with GASB Statement No. 3, which was amended by GASB 40;

b. Note 7. Long-Term Debt should include beginning and end-of-year balances and increases and decreases (separately presented), and the portion of each item that are due within one year of the statement date (GASB 34, paragraph 119).

1 **Ventura River County Water District**

2 E. Respondent performed audits of the Ventura River County Water District
3 (Ventura) for fiscal years ended June 30, 2006 and June 30, 2005. The audits of Ventura
4 contained the following departures:

5 (1) The independent auditor's report on the financial statements failed to state
6 that the audits were conducted under GAS (GAGAS Sections 5.05 and 5.06);

7 (2) The independent auditor's report on the financial statements failed to
8 include a paragraph referencing the report on internal control over financial reporting and
9 compliance;

10 (3) Language used in the "Independent Auditor's Report on the Internal
11 Control Structure Based on an Audit of General Purpose Financial Statements Performed in
12 Accordance with Government Auditing Standards" and "Independent Auditor's report on
13 Compliance Based on an Audit of General Purpose Financial Statements Performed in
14 Accordance with Government Auditing Standards" was obsolete with respect to basic financial
15 statements and OMB Circular A-128. Further, references to the Single Audit Act were
16 inappropriate, as Ventura did not appear to receive federal revenue.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Violation of Professional Standards)

19 12. Respondent is subject to discipline pursuant to Code section 5100,
20 subdivision (g), in conjunction with California Code of Regulations, title 16, section 58, in that
21 Respondent willfully violated applicable professional standards, as more fully discussed in
22 paragraph 11, above. All charges and allegations contained in paragraph 11, above, are herein
23 incorporated by reference as set forth in whole.

24 **THIRD CAUSE FOR DISCIPLINE**

25 (Failure to Issue Reports in Accordance with Professional Standards)

26 13. Respondent is subject to discipline pursuant to Code sections 5100,
27 subdivision (g), and 5062, in that Respondent issued auditor's reports that failed to conform to
28 professional standards, as more fully discussed in paragraphs 11 and 12, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Lack of Continuing Professional Education Basic Requirements
3 Related to Governmental Audits)

4 14. Respondent is subject to discipline pursuant to Code section 5100,
5 subdivision (g), in conjunction with California Code of Regulations, title 16, section 87,
6 subdivision (b), in that Respondent issued reports dated September 1, 2004 and August 22, 2005
7 for the audits of Inverness Public Utility District, a governmental entity, when, in fact, he was
8 not qualified to issue such reports. In fact, Respondent was not qualified to conduct audits of
9 governmental entities because he failed to complete the requisite continuing professional
10 education (CPE) specified by GAS, which requires that each auditor performing work under
11 GAGAS complete at least eighty (80) hours of CPE every two (2) years, and that at least twenty-
12 four (24) hours of the eighty (80) hours of CPE should relate directly to government auditing, the
13 government environment, or the specific or unique environment in which the audited entity
14 operates (GAGAS Section 3.45).

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein
17 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 18 1. Revoking or suspending or otherwise imposing discipline upon Certified
19 Public Accountant Certificate Number 19350, issued to Gary Allen Porter;
20 2. Revoking or suspending or otherwise imposing discipline upon Fictitious
21 Name Permit Number 670, issued to Porter & Company; Gary Allen Porter;
22 3. Ordering Gary Allen Porter to pay the California Board of Accountancy
23 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
24 Professions Code section 5107;

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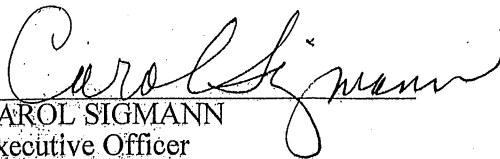
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4. Taking such other and further action as deemed necessary and proper.

DATED: May 29, 2008


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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